



Department of Health and Human Services  
Centers for Medicare & Medicaid Services  
Region 11  
26 Federal Plaza Rm. 3800  
New York, N.Y. 10278

Kathryn Kuhmerker  
Deputy Commissioner, Office of Medicaid Management  
New York State Health Department  
Empire State Plaza  
Corning Tower, 14<sup>th</sup> Floor  
Albany, NY 12237

RE: Amendment of Non-emergency Transportation (NET) Waiver

Dear Deputy Commissioner Kuhmerker,

We are in receipt of Madison County's request to participate in the current Section 1915(b)(4) Non-emergency Transportation (NET) waiver for New York, received on July 16, 2003. Based upon our review of the waiver amendment as submitted, CMS requires additional information in order to make a determination regarding your request. Please respond to the issues identified below.

**Reimbursement Questions Applicable to all Section 4.19B Noninstitutional Services**

In light of concerns raised by Congress over state funding of the Medicaid program, we ask that you provide the following information for each of the transportation services reimbursed pursuant to a methodology described in Attachment 4.19B of the State Plan.

1. Section 1903(a)(1) provides that Federal matching funds are only available for expenditures made by states for services under the approved State Plan. To ensure that program dollars are used only to pay for Medicaid services, we are asking states to confirm to CMS that the Contracted Entity retains 100 percent of the payments. Does the Contracted Entity retain all of the Medicaid payments and does not participate in such activities as intergovernmental transfers or certified public expenditure payments, including the Federal and State share, or is any portion of any payment returned to the State, local governmental entity, or any other intermediary organization? If the Contracted Entity is required to return any portion of any payment, please provide a full description of the repayment process. Include in your response a full description of the methodology for the return of any of the payments, a complete listing of the amount or percentage of payments that are returned and the disposition and use of the funds once they are returned to the State (i.e., general fund, medical services account, etc.)
2. Section 1902(a)(2) provides that the lack of adequate funds from local sources will not result in the lowering the amount, duration, scope, or quality of care and services available under the plan. Please describe how the state share of the Medicaid payment for the Contracted Entity is funded. Please describe whether the state share is from appropriations from the legislature, through intergovernmental transfer agreements (IGTs), certified public expenditures (CPEs), provider taxes, or any other mechanism used by the state to provide state share. Please provide an estimate of total expenditures

and State share **mounts** for the Medicaid payment. If **any** of the state share is **being** provided **through** the use of local funds **using** IGTs or CPEs, please fully describe the matching arrangement. If **CPEs** are **used**, please describe **how** the state verifies that the expenditures being certified are eligible for Federal matching funds in **accordance with 42 CFR 433.51(b)**.

3. **Section 1902(a)(30)** requires that **payments for services** be Consistent with efficiency, **an o m y** , and **quality of care**. **Section 1903(a)(1)** provides for **Federal financial** participation to States for expenditures for **services** under an **approved** State plan. If supplemental or enhanced payments are **made**, please provide the total amount for **each** type of supplemental or enhanced payment made to the Contracted Entity.
4. Do **any** capitation payments to the Contracted **Entity** exceed the amount certified as actuarially sound **as** required **under 42 CFR 438.6(c)**? If so, does the State recoup the excess **and return** the **Federal share** of the **excess** to CMS on the quarterly expenditure report?

**Questions Regarding Madison County Waiver Amendment Application**

Page 11, Section C. "Selection and Availability of Providers": This section states that the intent is to utilize the current public transportation provider.

How will **New York** ensure compliance with the open procurement requirements of **45 Code of Federal Regulations, Section 74.43**? **If** the result is a sole source procurement, the State must **show how**, in complying with the open procurement **process**, that the end **result** was sole sourcing.

Pursuant to **the provisions** of **Section 1915(f)(2)** of **the Social Security Act**, a waiver shall be deemed granted unless, **within 90-days after** the date of its submission, **the** request is denied or the State is informed in writing of **any additional information** which **is** needed in order to make a final determination. Our request for additional information (RAI) **stops the 90-day clock for** rendering a final decision on whether to approve the State's waiver **amendment** request. **A new 30-day** clock will start upon receipt of **the** State's complete response to our RAI.

**Thank** you for your prompt attention to these **issues**. If you have any **quastions** regarding this matter, please contact Mr. Michael Melendez with the Division of Medicaid and Children's Health in **CMS** **New York Regional Office at (212) 264-9121**.

Sincerely,



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Sue Kelly  
Associate Regional Administrator  
Medicaid and State Operations  
New York Regional Office

cc: Tim Perry-Coon, NY Office of Medicaid Management  
Mike Fiore, CMS Baltimore